



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO MCGILL ENVIRONMENTAL SYSTEMS OF N.C., INC. VDHBUR Permit No. 154

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and McGill Environmental Systems of N.C., Inc. for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Biosolids" means a sewage sludge that has received an established treatment for required pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and contains acceptable levels of pollutants, such that it is acceptable for use for land application, marketing or distribution in accordance with the Regulation as defined in 9 VAC 25-32-310.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "BUR" means Biosolids Use Regulation. 12 VAC 5-585-10 *et seq.*
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-32-10.
7. "McGill" means McGill Environmental Systems of N.C., Inc. a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. McGill is a "person" within the meaning of Va. Code § 62.1-44.3.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "O&M" means operations and maintenance.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Permit" means VDHBUR Permit No. 154, which was issued to McGill in November 2007, by the VDH. After the transfer of the biosolids program to DEQ on January 1, 2008, DEQ administratively continued the Permit until December 31, 2012.
12. "Point source" means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged. 9 VAC 25-32-10.
13. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage from vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by Department of Mines Minerals and Energy unless the Board determines that such injection or disposal will result in the degradation of ground or surface water resources. 9 VAC 25-32-10.
14. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters or soil as will, or is likely to, create a nuisance or render such waters or soil (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable despite reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural or for other reasonable uses. Such alteration is also deemed to be pollution, if there occurs: (a) an alteration of the physical, chemical or biological property of state waters or soil, or a discharge or a deposit of sewage, industrial wastes or other wastes to state waters or soil by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration

of, or discharge, or deposit, to state waters or soil by other owners, is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters or soil; or (c) the contravention of standards of air or water quality duly established by the State Water Control Board. 9 VAC 25-32-310

15. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
16. "Regulation" means the VPA Permit Regulation, 9 VAC 25-32-10 *et seq.* On January 1, 2008, regulatory oversight of all permits relating to land application of Biosolids was transferred from the VDH to DEQ. This transfer occurred at the direction of the 2007 General Assembly, which passed legislation that required all land application of Biosolids in the Commonwealth of Virginia be permitted under a permit issued by DEQ. The enactment clauses of the legislation specified that VDHBUR permits would continue to be valid for the term specified in each permit unless amended or revoked by the Board. At the time of the program transfer the provisions of the BUR were incorporated in the Regulation.
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VDH" means Virginia Department of Health.
22. "VPA" means Virginia Pollution Abatement.
23. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
24. "WWTP" means waste water treatment plant.

SECTION C: Findings of Fact and Conclusions of Law

1. McGill owns a biosolids company which regularly transports sewage sludge and biosolids from regional WWTPs to application sites.
2. Turner Run is the receiving stream, which is located in the James River Basin. During the 2010 305(b)/303(d) Water Quality Assessment, the stream was assessed as fully

supporting with observed effects for the Fish Consumption Use due to the VDH advisory for kepone. The other designated uses were not assessed and the segment is considered a Category 2B water. The incident was not addressed in the Chesapeake Bay TMDL, which was approved by the EPA on 12/29/2010. The TMDL allocates total phosphorus, total nitrogen, and total suspended solids to nonpoint sources, point sources, and atmospheric deposition in the Bay watershed. Due to its intermittent nature, the stream is considered a Tier 1 water. It is not currently proposed for designation as a Tier 3 water.

3. In November 2007, VDH issued VDHBUR Permit No. 154 to McGill. On January 1, 2008, DEQ administratively continued VDHBUR Permit No. 154, which will expire on December 31, 2012.
4. On June 9, 2011, McGill released Rivanna Water and Sewer Authority (RWSA) sewage sludge, which did not meet Class B standards for volatile solids reduction and retention time, onto and adjacent to Interstate 295 just west of Route 1 in Henrico County, Virginia.
5. On June 9, 2011, DEQ staff were notified, and conducted an investigation at the spill site. DEQ staff determined that the tailgate on the transport truck hauling RWSA sewage sludge had failed to remain closed due to a defective tailgate, and had deposited the sewage sludge on the pavement of I-295. The transport truck also deposited sewage sludge on the shoulder and ditch of I-295 approximately $\frac{1}{4}$ mile east on I-295 from the first sewage sludge spill on the pavement. The sewage sludge deposited on the shoulder and ditch of I-295 was due to the opening of the transport truck trailer in order to reclose the tailgate properly. DEQ staff, observed multiple vehicle accidents due to the sewage sludge spill. DEQ staff observed a contractor hired by VDOT conducting clean up of the sewage sludge from the travel lanes of I-295.
6. On June 9, 2011, DEQ staff returned to the site of the spill and observed that travel lanes had been cleared, however, 10 gallons of sewage sludge remained at the second spill site in the ditch adjacent to I-295, which is a tributary of Turner Run.
7. On June 9, 2011, the tailgate on the transport truck was repaired.
8. On June 10, 2011, DEQ staff again returned to the site of the spill and the 10 gallons of sewage sludge remained at the second spill site. DEQ staff notified McGill that the clean up of the second spill site was McGill's responsibility.
9. On June 10, 2011, the driver of the transport truck attempted to clean up the second spill site, however, the driver stated she was prevented from doing so by state police due to safety concerns since proper safety precautions had not been taken.
10. On June 10, 2011, DEQ staff again returned to the second spill site for the second time that day and observed that the 10 gallons of sewage sludge remained.

11. On June 11, 2011, the second spill site received 1.4 inches of rain.
12. On June 14, 2011, DEQ staff returned to the second spill site and observed the sewage sludge had still not been removed by McGill, although some had washed away due to the rain event. DEQ staff notified McGill that the clean up of the second spill site still needed to be done, and reiterated that the clean up was McGill's responsibility. DEQ staff noted they did not receive a written report of the spill incident within five working days of the spill.
13. On June 15, DEQ staff returned to the second spill site, observed that the sewage sludge remained, and cleaned up the remaining sewage sludge.
14. On June 17, 2011, the driver of the transport truck attempted to clean up the second spill site, however, DEQ staff had already done so.
15. On July 7, 2011, DEQ received the written report regarding the spill. McGill indicated it was re-writing its "spill response plan" to address additional safety latches on transport trailers and spill response actions for transport drivers and other McGill staff.
16. On August 19, 2011, DEQ issued NOV No. 2011-08-PRO-201 for the violations described in paragraphs C (4) – C (15), citing, 9 VAC 25-32-540(A), 9 VAC 25-32-540 (B), 9 VAC 25-32-540(E), 9 VAC 25-32-30(A), Va. Code § 62.1-44.5(A), 9 VAC 25-32-30(B)(1) and 9 VAC 25-32-30(B)(2).
17. 9 VAC 25-32-540(A) states that "Transport vehicles shall be sufficiently sealed to prevent leakage and spillage of sludge."
18. 9 VAC 25-32-540(B) states that "[t]he permit holder shall be responsible for the prompt cleanup and removal of biosolids spilled during transport to the land application site or to or from a storage facility. The operations manual shall include a plan for the prevention of spills during transport and for the cleanup and removal of spills. The permit holder shall ensure that its personnel, subcontractors or the drivers of vehicles transporting biosolids for land application shall be properly trained in procedures for spill removal and cleanup."
19. 9 VAC 25-32-540(E) states that a written report, which shall include a description of measures taken in response to the spill, shall be submitted by the permit holder to the Department within five working days of the spill.
20. 9 VAC 25-32-30(A) states that "All pollutant management activities covered under a VPA permit shall maintain no point source discharge of pollutants to surface waters except in the case of a storm event greater than the 25-year, 24-hour storm."
21. 9 VAC 25-32-30(B)(1) states that "[e]xcept in compliance with a VPA permit, or another permit issued by the board, it shall be unlawful for any person to: a. Discharge into, or

adjacent to, state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or b. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.”

22. Va. Code § 62.1-44.5(A) states that “[e]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances . . . 3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses”
23. 9 VAC 25-32-30(B)(2) states “[a]ny person required to obtain a permit pursuant to this chapter who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of subdivision B 1 of this section; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subdivision B 1 of this section shall notify the department of the discharge immediately upon discovery of the discharge and, in any event, no later than 24 hours after the discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge.
24. On September 1, 2011, DEQ staff met with representatives of McGill to discuss the violations. McGill reiterated it had looked at its processes and revised the handling manual to be given to drivers, so that spill response would be better. McGill stated that it now has two contractors it can contact to clean up spills quickly.
25. Based on the results of DEQ staff’s investigation of the spill and the September 1, 2011 meeting, the Board concludes that McGill has violated 9 VAC 25-32-540(A), 9 VAC 25-32-540(B), 9 VAC 25-32-540(E), 9 VAC 25-32-30(A), 9 VAC 25-32-30(B)(2), Va. Code § 62.1-44.5(A) and 9 VAC 25-32-30(B)(1), as described in paragraphs C(4) through C(24), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders McGill and McGill agrees to:

1. Pay a civil charge of \$10,413.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

McGill shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of McGill for good cause shown by McGill or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, McGill admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. McGill consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. McGill declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by McGill to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. McGill shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. McGill shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. McGill shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and McGill. Nevertheless, McGill agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after McGill has completed all of the requirements of the Order;
 - b. McGill petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to McGill.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve McGill from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by McGill and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of McGill certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind McGill to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official or officer of McGill.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, McGill voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 26th day of JUNE, ²⁰¹²~~2011~~.



Michael P. Murphy, Regional Director
Department of Environmental Quality

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McGill Environmental Systems of N.C., Inc. voluntarily agrees to the issuance of this Order.

Date: 3/19/12 By: M. Noel Lyons President
(Person) (Title)
McGill Environmental Systems of N.C., Inc.

~~Commonwealth of Virginia~~ State of North Carolina
City/County of Wake

The foregoing document was signed and acknowledged before me this 19 day of

March, 2012, by Michael Noel Lyons, who is

President of McGill Environmental Systems of N.C., Inc, on
behalf of the corporation.

Rhonda L. Henderson
Notary Public

Registration No. _____

My commission expires: 5-11-2015

Notary seal: